

**MALPRACTICE COVERAGE OF TRAINEES IN VA-SPONSORED PROGRAMS
WHEN THEY ARE PERFORMING PROFESSIONAL SERVICES AT A
NON-VA FACILITY**

- 1. REASON FOR ISSUE:** This Veterans Health Administration (VHA) Directive is issued to authorize providing trainees (e.g., medical residents, associated health residents and students, and participants in special fellowship programs) in Department of Veterans Affairs (VA)-sponsored programs with malpractice liability coverage if the non-VA facility does not provide this coverage.
- 2. SUMMARY OF CONTENTS:** This document defines VHA policy on providing medical malpractice coverage for trainees in VA-sponsored programs when they are performing professional services at a non-VA facility.
- 3. RELATED ISSUES:** None.
- 4. RESPONSIBLE OFFICE:** The Office Academic Affiliations (14) is responsible for the contents of this Directive.
- 5. RESCISSIONS:** This directive rescinds M-8, Part II, Chapter 1, paragraph 1.11, Chapter 2, paragraph 2.17, and Chapter 4, paragraph 4.14, to the extent that they are inconsistent with this directive.
- 6. RECERTIFICATION:** This VHA Directive is scheduled for recertification on or before the last working day of October 2004.

S/M . L. Murphy
Thomas L. Garthwaite, M.D.
Acting Under Secretary for Health

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1. PURPOSE: This Veterans Health Administration (VHA) Directive is issued to authorize providing trainees (e.g., medical residents, associated health residents and students, and participants in special fellowship programs) in Department of Veterans Affairs (VA)-sponsored programs with malpractice liability coverage if the non-VA facility does not provide this coverage.

2. BACKGROUND: The liability protection is that which is provided under the Federal Employees Liability Reform and Tort Compensation Act, Title 28 United States Code (U.S.C.) 2679 (b)-(d). This means that VA-sponsored trainees going to non-VA health care facilities or agencies for required training will be provided the same liability protections as they would be provided at VA facilities.

3. POLICY: It is VHA policy to see that all VA trainees in a VA-sponsored program are covered by malpractice insurance. ***NOTE:** If there is any doubt as to malpractice coverage during the time that trainees are in a VA-sponsored program, the local Regional Counsel will be consulted.*

4. ACTION

a. Typically, non-VA health care facilities will cover VA trainees from VA-sponsored programs under their malpractice insurance when they are at the non-VA facility. In that case, Attachment A should be used when signing the memorandum of affiliation. Attachment A identifies the non-VA health care facility, or agency, as the responsible party for providing protection of VA trainees from personal liability while performing professional services at the non-VA health care facility or agency.

b. If the non-VA health care facility declines to cover the VA trainees in a VA-sponsored program under its malpractice insurance when they are at its facility, Attachment B should be used. Attachment B defines the protection of VA trainees from personal liability while providing professional services covered by the agreement at the non-VA health care facility or agency.

5. REFERENCES

- a. Federal Tort Claims Act, 28 U.S.C. 2679(b)-(d).
- b. VHA Manual M-8, Part II, Chapter 1, 2, and 4.
- c. Title 38 U.S.C. 7316.

**SAMPLE MEMORANDUM OF AFFILIATION
EDUCATIONAL PROGRAM AGREEMENT**

**BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS (VA)
AND THE UNDERSIGNED NON-VA HEALTH CARE FACILITY OR AGENCY**

VA NETWORK:

VA TREATMENT FACILITY (OR FACILITIES):

VA-SPONSORED EDUCATIONAL OR TRAINING PROGRAM:

**NAME OF NON-VA HEALTH CARE FACILITY OR
AGENCY:** _____

**LOCATION OF NON-VA HEALTH CARE FACILITY OR
AGENCY:** _____

It is mutually agreed by the VA and _____ (the non-VA health care facility or agency) _____ that practical experience for trainees in the specified VA-sponsored program will be provided at the non-VA health care facility, or agency, identified above.

The VA education program director will assume responsibility for the selection and assignment of VA trainees to the learning experiences. There will be coordinated planning between the non-VA health care facility, or agency, and the director of the VA educational or training program regarding scheduling and work assignments. While at the non-VA health care facility or agency, VA trainees will conduct themselves in accordance with the rules and regulations of the non-VA health care facility or agency.

The non-VA health care facility, or agency, will retain full responsibility for the care of patients and will maintain administrative and professional supervision of the VA trainees insofar as their presence affects its operation and/or the direct or indirect care of the patients.

VA trainees will receive a thorough orientation to the non-VA health care facility or agency. VA training program director and the non-VA health care facility or agency staff supervisors will evaluate the trainee's performance by mutual consultation according to the guidelines of the training program.

The non-VA health care facility, or agency, complies with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, Title III of the Older Americans Amendments of 1975, the Americans with Disabilities Act of 1992, and all related regulations, and assures that it does not, and will not, discriminate against any person on the basis of race, color, sex, creed, national origin, age or handicap under any program or activity receiving Federal financial assistance.

Nothing in this agreement is intended to be contrary to State or Federal laws. In the event of conflict between terms of this agreement and any applicable State or Federal law, that State or Federal law will supersede the terms of this agreement. In the event of conflict between State and Federal laws, Federal laws will govern.

When VA trainees are providing professional services covered by this agreement, their protection from personal liability while at the non-VA health care facility, or agency, will be the responsibility of the non-VA health care facility or agency.

Nothing in this agreement grants to VA any legal authority to exercise control over any non-VA health care facility, agency, or program. Ultimate responsibility for the control and operation of non-VA facilities and programs rests with the non-VA facility or agency.

Periodic reviews of academic programs and policies will be conducted as necessary under the auspices of VA's Chief Academic Affiliations Officer.

This agreement is in force until further notice; it may be terminated in writing at any time by mutual consent with due consideration of patient care and educational commitments, or by written notice by either party 6 months in advance of the next training experience. The affiliation agreement previously agreed to on ____ (Date) ____ is hereby rescinded.

Name and Title of Responsible Official
for the non-VA facility or agency

Network Director, or designee
Department of Veterans Affairs

Date: _____

Date: _____

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VA TREATMENT FACILITY (OR FACILITIES):

VA-SPONSORED EDUCATIONAL OR TRAINING PROGRAM:

**NAME OF NON-VA HEALTH CARE FACILITY OR
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**LOCATION OF NON-VA HEALTH CARE FACILITY OR
AGENCY:**_____

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When VA trainees are providing professional services covered by this agreement, their protection from personal liability while at the non-VA health care facility or agency will be that which is provided under the Federal Employees Liability Reform and Tort Compensation Act, 28 U.S.C. 2679 (b)-(d).

Nothing in this agreement grants to VA any legal authority to exercise control over any non-VA health care facility, agency or program. Ultimate responsibility for the control and operation of non-VA facilities and programs rests with the non-VA facility or agency.

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